

194 O.

File No. 168-40

Previous References.

103-39 (1-2)
" 181-40 (1-5)
" 23-37 (1-2)

Serial Nos. 1-5

Later References.

els Sep 1438/41

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. ~~1-5~~ only

Part B for To

SUBJECT.

Execution of summons to a witness issued
by the British Indian Courts

Deleting the penal clause in the summonses form
in use in the British Indian Courts while issuing
summonses to witnesses residing in Mysore State

From

The I.G. of Police

No 1022 / 40-41 dt 21.1.1941

Forwards for Orders of Govt a summons issued by the Deputy Magistrate Adoni for execution in the State

The Deputy Magistrate Adoni has issued a summons under Sec 68 of the Cr.P.C to a witness residing in Bangalore city.

The summons contains a provision to the effect that if the witness refuses to appear

before the court on the due date, a Warrant would be issued to compel his ~~attendance~~ attendance in the said court.

The I.G. of Police solicits views of Govt as to whether such summonses are executable in the State as consequence of the ^{repealing} ~~amendment~~ of

The Chief Commissioners Note of 23.7.1871 under which ~~such~~ ~~summons~~ process of every description issued by the British Indian Magistrates were being executed in the State. till the date of the Mysore Education Act came into

On a former occasion, a similar question was decided by Govt. In that case a warrant under Sec 90(b) of the Cr. P. C for the arrest of a person residing in the State and who was alleged to have failed to appear before the Court when summoned was held not executable in the State and it was returned to the Presidency with that observation.

(3) In the present case what has been received for execution in the State is ^(not a warrant) a summons, under Sec 68 issued by the Deputy Magistrate Adoni for service on a person residing in Bangalore City.

(4) It is a point for consideration as to whether such summonses are executable.

Summons for service on persons who are residents of the State

Serial
No.

are generally being received from Courts in the British Indian Provinces and are being executed in the State.

But then the question for decision would be whether a summons embodying the penal provision ^{can} ~~could~~ be executed in the State. A warrant issued for the

arrest of a person failing to appear before a Court when summoned has been held to be ~~not~~ enforceable in the State.

2) In the circumstances, there may not be any objection to execute the said summons provided the provision re. the issue of a warrant is deleted from it.

Sub for order

Chm
2/2
bm

The present process is only a summons & as such it is executable. If it was a warrant, then it would have been returned executable.

(Law Secretary)

Serial
No.

The file was returned to the Courts section with orders to trace references, if any, wherein the penal provision re. the issue of a Warrant for Compelling the attendance of a Witness was insisted upon in all cases and to find out whether any provision was made in the Extradition Act for execution of such Warrants.

8) It is submitted that ~~after June 1938~~ (the ~~date of passing~~ summonses issued either by ~~from~~ the British Indian Courts or by the Mysore Courts are not generally being sent through this Office and it is usual that Correspondence on such matters takes place between the Courts. In very few cases summonses issued by British Indian Courts are being received in this Office from the Presidency for service in the State and it is usual to forward such summonses to the concerned Dist. Magistrates for needful action. Very recently subpoenas containing the penal provision re. the issue of a Warrant were received from the Bombay High Court and they were sent for service to the parties concerned.

9) No provision has been made in the Mysore Extradition Act for the service of summonses.

Hays H, GYE

Serial
No.

It may however ^{be} submitted that so far as the summonses for service on witnesses residing outside the State (in British India) are concerned, the inclusion of the penal clause in the summons issued by Mysore Courts is prohibited (Please see page 35 of the Criminal Rules. Practice Vol. I.).

(1) In the present instance, the summons has been issued by a British Indian Court under Sec 68 of the Cr. P.C and it has been stated therein that if the witness ~~for~~ fails to attend the Court a Warrant for his arrest would be issued.

The J.G. of Police directs orders of Govt as to whether such summonses are executable.

(2) The point for orders is whether a summons embodying the penal provision referred to above can be executed in the State.

C.P.C.

7/34

9.9

(12)

I do not think that a

summons with a penal provision

issued outside the State for appearance of

a witness of the State to give evidence

outside Mysore, can be served in the

State - for, in default, no warrant can be

served on a witness of a "foreign State"

to go to give evidence, he is to be summoned

and on Commission. A similar provision

is made in Mysore Code Cr. Rules & Practice Vol

page 35.

Las Secy (g)

1070

194

Serial
No.

There is no provision of law under which a Criminal Court in the Mysore State can compel the attendance of a witness residing outside the State. Where such witness fails to appear, the proper course is to have recourse to S. 503, Cr. Pro. code and have the evidence taken in commission. In summonses to witnesses there is a proviso that if the witness neglects or fails to appear a warrant will be issued to compel attendance. This proviso has no place in the summonses issued to foreign witnesses. The High Court of Mysore have instructed H. local Magistrate Courts to delete this proviso when summonses are issued to witnesses outside the State. But the summonses coming from Por. India to Mysore for service still retain this proviso. This seems to be irregular. It is essential that the Residency may be requested to instruct the Por. Indian Courts to delete the penal clause from the summonses to witnesses in Mysore. This would remove the doubt felt in executing such summonses in this State.

The Residency may be addressed accordingly,

(I Member)

Serial
No.

The Member of Council was please
to say that ~~the summary may be sent to J. G. P. for~~
service ~~ignoring~~ the penal clause.

A draft of the letter to the Residency
may be put up.

Hm
2
14/4/41

3/6/41

Submitted with two drafts.

CPOR
17/4

I think the draft is to be
revised, as the date ~~is~~
as the ~~is~~ has lapsed - it has to be
revised, with a direction that the penal
clause in the ~~is~~ be deleted, & the ~~is~~
be sent to service.

The draft to the Residency may

be

(as Secretary).

3
18/4/41

The draft Both may be issued

Hm
2
18/4/41

Im
3
21/4/41

To
The J.G. office
No 538 of 22.4.41

States that the summaries in question may
be enclosed

Need instructions
to put up 2 drafts
one to the J.G.P. and
another to the Residency
CPOR
17/4

To

The Secy to the Honble the Resident
No 1840 of 22.4.41.

Requests that the British Indian
Court may be requested to delete the
penal clause.

From

The Secretary to the Honble the Resident
No R.F. 134-41 / Judd of 15.12.1941.

Forwards copies of Communications
received from the Govts of Bombay
and Madras in the matter of
deleting the penal clause in the
^{printed} ~~printed~~ summons form while issuing
such summons for service on persons
residing in Mysore State.

If approved, ~~copies~~ Copies of the
Communication received from the Residency
may be communicated to the High
Court and the District Magistrates of

Serial
No.

25)

for perusal

Minister
for Law.)
Deewan,

Hm
2
23.12.41.

Hm
24/12

3
23/12/41

All

25/12/41

Hm
2
26.12.41.

gm 2
28/12/41

The Regl. Min. Coun

The J.G. of Police

The Dms of District

NO 3097-107 of 8.1.42.

Forwards copies of Correspondence received from
the Residency in the matter of deleting the
penal clause in Sanwas form

DEC 23 1941
N. 6363

DEWAN'S OFFICE

24 DEC. 1941

NO 5441

4/55

B

Tele gram: POLICE
phone: 2108

POLICE DEPARTMENT.

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE,

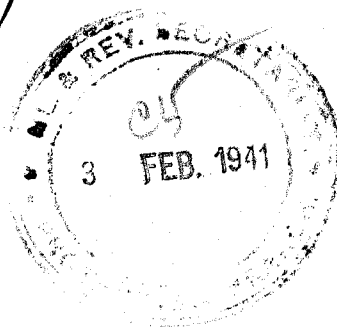
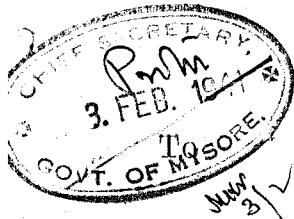
No.C./022/40-41.

Bangalore, dated January 31, 1941.

E.N. 2.

FROM

L. G. B. PEEL, Esq., C.I.E.,
Inspector-General of Police in Mysore,
Bangalore.



Rajasevaprakashta
B. T. Kesavalingar, Esq., B.A.,
Chief Secretary to Government of Mysore,
Bangalore.

SKK,

Subject:- Execution of summons to a witness
issued by the British Indian Courts.

Sir,

I have the honor to enclose a summons in duplicate received from the Deputy Magistrate, Adoni for execution in the Mysore State and to enquire whether, in view of the cancellation of the Chief Commissioner's notification No.iii of July 23, 1878 by Section 22(1) of the Extradition Act of 1938, such summons issued by Magistrates in British India should be executed by the Police of this State. In this connection, kind reference is invited to my letter C.279/39-40 dated the 1st November 1939 regarding a warrant issued by the First Class Magistrate, Vizagapatam, for the production of a witness in this Court.

I have the honor to be,
Sir,
Your most obedient servant,

Inspector General of Police.

MPR.

GENERAL AND REVENUE
SECRETARIAT.

(Continuation sheet draft form.)

To
The I.G. of Police in
Mysore

Sir

With reference to your
letter No C 1022 /40-41
of 31.1.1941 forwarding
for orders of Govt a Summons
in duplicate received from
the Deputy Magistrate
Adoni for execution in
the State, I am directed
to state that ~~such~~ ~~to be~~

such summonses may be executed
~~in the State~~ by the police, of ~~Mysore~~;
quarrying the penal clause.

The enclosures received
with your letter under reference
are returned herewith

GENERAL AND REVENUE
SECRETARIAT.

(Continuation sheet draft form.)

To

The Secretary to the Honble
the Resident

Sir

I am directed to state that it has been brought to the notice of this Govt that the Criminal Courts in British India while issuing summonses under section 68 of the Cr. P.C to witnesses residing in this State are using the printed forms of summonses embodying the provision to the effect that if the witness neglects or fails to appear a warrant will be issued to compel attendance. And to state that there is no provision of law under which even a process could be

taken to secure the attendance
of witnesses. I am in
this connection to invite
reference to this Office
letter No PA 809 /cts 108-39-2
of 4.12.1939 on this
subject.

I am in the circumstances
to request that if there
is no objection the above
fact may kindly be
brought to the notice of
the British Indian Courts
~~and~~ they may also be
requested ^{to see} that in future
whenever summonses are
issued by them to summon
a witness residing in this
State the penal clause referred
to above ~~is~~ ^{is} deleted

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Dated, Bangalore. 22nd April 1941.

No. P 8318
CS-168-40-3
Sub C 3

From

The ~~General~~ Secretary to the Government of His Highness
the Maharaja of Mysore.
Law Department.

To

The Inspector General of Police in Mysore,
Bangalore.

Sir,

With reference to your letter No. C. 1022/40-41, dated 31st January 1941 forwarding for orders of Government a summons in duplicate received from the Deputy Magistrate. Adoni for execution in the State, I am directed to state that such summonses may be executed by the Police ignoring the penal clause.

The enclosures received with your letter under reference are returned herewith.

I have the honor to be,
Sir,
Your most obedient servant,

h

For Secretary to Government,
Law Department.
cm

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat

Bangalore, Dated, 22 - 4 - 1941

No. Pol 1840

From

*The Secretary to the Government of His Highness
the Maharaja of Mysore,
Law Department.*

To

*The Secretary to the Hon'ble the Resident in Mysore,
Bangalore.*

I am directed to state that it has been brought to the notice of this Government that the Criminal Courts in British India while issuing summonses under section 68 of the Criminal Procedure Code to witnesses residing in this State are using the printed forms of summonses embodying the provision to the effect that if the witness neglects or fails to appear a warrant will be issued to compel attendance and to state that there is no provision of law under which coercive process could be taken to secure the attendance of witnesses. I am in this connection to invite reference to this office letter No. Pol.809/Cts.108-39-2, dated 4th December 1939 on this subject.

I am in the circumstances to request that if there is no objection the above fact may kindly be brought to the notice of the British Indian Courts. They may also be requested to see that in future whenever summonses are issued by them to summon a witness residing in this State, the penal clause referred to above is deleted

I have the honor to be,
Sir,
Your most obedient servant,

7 Secretary to Government,
Law Department.

CBM

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

3327841
P 841
No. R.F. 134-41/Judl.

6/1075

FROM

THE SECRETARY

TO THE HON'BLE THE RESIDENT IN MYSORE

To

The Secretary to the Government of,
His Highness the Maharaja of Mysore,
Law Department, Bangalore.

Dated Bangalore, the 15th December 1941.

Issue of summonses by Criminal
Courts in British India.

SIR,

I am directed to refer to your letter No. Pol. 1840/

- | | | |
|--|---|-----------------|
| 1. Letter from the Government of Bombay, Home Department, No. 5206/2-III dated the 17th November 1941, and |) | Cts. 168-40-3 |
| 2. G.O. of the Government of Madras No. Press. 5851 dated the 1st December 1941. |) | dated the 22nd |
| |) | April 1941, and |
| |) | to forward |

copies of the papers noted in the margin.

I have the honour to be,
Sir,
Your most obedient servant,

Ok I am an officer.

for SECRETARY TO THE RESIDENT.

ksln.

Summonses:- Issue of - for service
outside British India.

With reference to your letter No.R.F.-41-Jud1, dated the 2nd May 1941, I am directed to state that the High Court, Bombay, has been requested to issue instructions to the Courts concerned in the Province of Bombay to delete the penal clause from the printed form of summons whenever summonses are issued for service on witnesses residing outside British India.

GOVERNMENT OF MADRAS.

Received 1941.

Registered..1941

Abstract.

Criminal Rules of Practice-Introduction of a new
rule 16-A- Approved.

HOME DEPARTMENT.

G.O.No.Press.5851.

Dated 1st December 1941.

Read the following paper:-

From the Honourable the Resident in Mysore, No.R.F.134-41/Judicial dated 2nd May 1941.

To the High Court, No.1387/D-5 dated 16th September 1941.

From the High Court, No.ROC.3816/41-C-4 dated 6th November 1941.

O R D E R.

In exercise of the powers conferred by section 224 of the Government of India Act, 1935(26 Geo.5ch.2) and of all other powers hereunto enabling His Excellency the Governor of Madras is hereby pleased to approve the following amendment proposed by the High Court to the Criminal Rules of Practice and Orders, as subsequently amended:-

AMENDMENT.

In part I of the said Rules of Practice and Orders after rule 16 the following rule shall be inserted, namely:-

Form of summons for appearance of witnesses in Mysore State. "16-A. When addressing summons to secure the appearance of witnesses residing in Mysore State, the minatory clause in Judicial Form No.39 shall be removed from the form of summons before issue."

(By order of His Excellency the Governor)

Sd/-A.R.MacEwen,
Secretary to Government.

GENERAL AND REVENUE
SECRETARIAT.

(Continuation sheet draft form.)

- (1) Letter from the Govt of Bombay
Hame Sept No 5206/2-III of
17. 11. 1941
- (2) G.O. of the Govt of Madras
No press 5851 of 1. 12. 1941

- (1) The Registrar High Court
- (2) The Dist. Magistrates of
Districts
- (3) The S.G. of Police

Sir

I am directed to forward
herewith copies of the
marginally noted Communication
received from the Presidency
in the matter of deleting
the penal clause from the
printed form of Summons
whenever summonses are
issued for service on
Witnemes residing in
Madras State

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE.

No. P3097-107
Cs-168-40-5
Encl.

General and Revenue Secretariat,
Dated Bangalore, 8th January 1942.

FROM

The Secretary to the Government of
His Highness the Maharaja of Mysore.
Law Department.

TO

The Registrar, High Court of Mysore,
" District Magistrates of Districts,
" Inspector-General of Police.

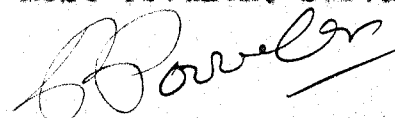
SIR,

I am directed to forward herewith copies of the marginally

- | | |
|---|---|
| 1. Letter from the Government of Bombay,
Home Department No. 5206/2-III dated
17th November 1941. | noted communications --
received from the Resident |
| 2. Government Order of the Government of
Madras No. Press 5851 dated 1st December
1941. | in the matter of deleting |

the penal clause from the printed form of summons whenever summonses are
issued for service on witnesses residing in Mysore State.

I have the honour to be,
Sir,
Your most obedient servant.


W Secretary to Government,
Law Department.

Summonses:- Issue of - for service
outside British India.

With reference to your letter No.R.F.-41-Jud1, dated the 2nd May 1941, I am directed to state that the High Court, Bombay, has been requested to issue instructions to the Courts concerned in the Province of Bombay to delete the penal clause from the printed form of summons whenever summonses are issued for service on witnesses residing outside British India.

GOVERNMENT OF MADRAS.

Received.....1941

Registered..1941.

Abstract.

Criminal Rules of Practice-Introduction of a new
rule 16-A- Approved.

HOME DEPARTMENT.

O.O.No.Fran.5251.

Dated 1st December 1941.

Read the following paper:-

From the Honourable the Resident in Mysore, No.R.F.134-41/Judicial
dated 2nd May 1941.

To the High Court, No.1387/D-5 dated 16th September 1941.

From the High Court, No.R.O.S.3516/41-C-4 dated 6th November 1941.

O R D E R.

In exercise of the powers conferred by section 224 of the ---
Government of India Act, 1935(26 Geo.5ch.2) and of all other ---
powers hereunto enabling His Excellency the Governor of Madras is
hereby pleased to approve the following amendment proposed by the
High Court to the Criminal Rules of Practice and Orders, as subse-
quently amended:-

AMENDMENT.

In part I of the said Rules of Practice and Orders after rule
16 the following rule shall be inserted, namely:-

Form of summons for
appearance of witnesses
in Mysore State.

"16-A. When addressing summons to secure
the appearance of witnesses residing in
Mysore State, the minatory clause in ---
Judicial Form No.39 shall be removed ---
from the form of summons before issue."

From the form of summons before issue."

(By order of His Excellency the Governor,
sd/-L.S.MadRwan,
Secretary to Government